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THE

LEGALITY OF DRUG PROVINGS

RECOGNIZED.

20,625

Margaret Washington, a colored woman was employed in my family as a house-servant. She was a fat woman of low stature, short neck and usually languid in her movements. She never complained of any sickness or asked for any prescription, she was supposed to enjoy fair health. On the 15th of January, 1862, shortly before supper-time I administered to her with her free consent, for a *proving*, about thirty-five drops of tincture of Gelseminum. This tincture had been prepared twenty hours previously with dilute alcohol, from a sample of the *dried* root. After supper I went up-stairs to the second story front room and sat down at my writing table. While I was thus engaged, Margaret hurries up-stairs from the basement, comes into my room breathing very hard, exhibiting in her countenance intense fear, and exclaiming "Oh, doctor, I'm dying! I'm dying! do something for me." She attempted to lie down upon the bed, her head had barely touched the pillow, when she sprang up convulsively, calling out in a loud whisper "my breath, my breath." She clapped her hands across her breast rapidly, seemed unable to retain one position for more than a few moments. Finding that her pulse was below 40 and extremities cold, I resorted to stimulants, and sent out for the assistance of two medical friends. She rallied for a few minutes, then struggled as for breath and cried out. Presently she was taken with an excruciating chest pain. In a suffocative spasm she got down upon the floor, went into an apoplectic stupor, breathed hard, foamed freely at the mouth and died within ten minutes after the suffocative spasm. Previous to the spasm she was conscious and rational; after that, she did not speak. From the time of her coming into the room to her death was less than half an hour, and the time of *death* was *within two hours* after taking the medicine.

Shortly after the death of Margaret I sent out for the coroner, requesting him to call and decide whether, under the circumstances, it would be proper to hold an inquest. Dr. Edward Lauderdale, an allopathic physician, came, summoned his jury in a very uncereemonious manner, this jury also being exclusively allopathic. He then engaged Dr. C. H. Barrett, another allopathic physician, to make the post-mortem examination. The coroner's

jury returned a verdict that the remote cause of death was disease of the pericardium and the immediate cause the injudicious administration of Gelseminum by Dr. Lodge.

The day after the rendition of the verdict the prosecuting attorney, David E. Harbaugh, another allopath, makes an information that I had unlawfully killed Margaret Washington, upon this I was held to trial. [In this state grand juries have been abolished.]

The case came on for trial on the 20th of May, 1862, before the Recorder, Honorable Henry A. Morrow. The jury being sworn, the prosecutor thus opened his case:

"The defendant, Edwin A. Lodge, who is I believe a doctor, on the 15th of January, having a decoction (:) of a root called Gelseminum, gave a quantity to the deceased Margaret Washington. Certain effects were produced. In one and a half hours she died. It will be a question for you to determine whether, under the circumstances, the administration of the Gelseminum causing death, whether the defendant has not committed an offence against the laws of the land.

"We shall show she died from no other cause than the administration of the poison. If so, and it was improperly and recklessly administered, although there was no intention to produce death, the defendant is responsible.

"The general law relating to these cases is this: "If a person, whether a medical man or not, profess to deal with the life or health of another, and if he cause the death of the other through a gross want of either" (care or knowledge) "he will be guilty of manslaughter."

"The law duly protects physicians. We do not charge them with criminality when they are unfortunate in their practice, if they used ordinary skill and diligence, but in this case the evidence will disclose that the defendant *was not treating the deceased as a patient, she was not an invalid. It was a mere experiment to determine the strength of the medicine.* It differs, therefore, from cases where physicians are operating upon their patients."

Dr. Charles H. Barrett sworn:

"I made a post-mortem examination of Margaret Washington. I opened the head and examined the brain and its membranes. Substance of the brain in perfect health, there was considerable venous congestion of the membranes of the brain. Substance of lungs healthy, pleura slightly adherent, old adhesions, three or four perhaps (!). The heart of natural size, pericardium slightly adherent to sternum, within the sac I found a quantity of light-colored serous fluid to the amount of three ounces, I should judge (!). I did not measure or weigh it. I guessed at it (!). There was much more than the usual quantity. Stomach, no signs of inflammation. Liver and spleen healthy.

I know nothing about the Gelseminum *practically*. I have studied it in the books. It is a depressant acting upon the circulatory and nervous systems. It relaxes the muscular system. It acts upon the brain, also upon the eye, producing double vision. In my opinion the serum around the heart would cause the action of the heart to be more labored, making the effect of a medicine acting on the heart to be more deleterious. The disease of the pericardium in this case was not sufficient to produce death, without some other exciting cause. *There was no organic disease of the heart itself.*

The death in this case was produced in my opinion by the dose of medicine, combined with the dropsy of the heart. There was no organic disease discovered sufficient to account for the death.

Cross-examined.

The post-mortem was conducted by myself, the physicians present were mere lookers on. *It was a critical post-mortem, as far as the heart and brain were concerned.*

"Did you weigh the heart?" No, I did not.

Did you weigh the fluid? No.

Did you examine any part of the heart with a microscope? No.

When you came down to the pericardium and found there was fluid within it, you opened it I suppose very carefully that the amount of fluid should be definitely ascertained? An incision was made, much of the fluid escaped into the cavity of the chest (!) And you call this an accurate, fair, *critical* post-mortem examination do you? "Well, I cannot say it was *very* accurate."

I do not think she died of any other disease of the heart, if she had, the post-mortem would have disclosed it.

If she had been troubled with fatty degeneration of the heart, it would have been revealed without a microscope.

"Do persons die from angina pectoris and post-mortem examinations fail to discover any traces of organic disease?"

"I do not recollect any such cases."

"What is the reputation of M. Andral?" "He stands high."

"Does he report such cases?" "I do not know."

"What caused the accumulation of fluid within the pericardium?" "The same inflammation probably that caused the adhesion of the pleura."

"Are you well acquainted with the Gelseminum?" "From the recorded opinion of others I am, I have a good knowledge of the drug."

"Will you please state how it affects the respiration?" (hesitatingly,) "*I do not know.* I have studied the medicine, but have never used it, and cannot state the particular organs that are affected by it."

Dr. Edward Lauderdale was sworn and related *his recollection* of Dr. Lodge's testimony before him as coroner.

Dr. J. M. Allen. He served as one of the coroner's jury and related what he remembered of Dr. Lodge's testimony, &c.

Indy Taylor, (colored) sworn. Knew the deceased, was a large heavy set woman, ate hearty, saw her the Monday before she died.

Dr. Zina Pitcher sworn. (Allopathic.) I have been forty years in practice. I have no practical knowledge of the Gels. I know its properties from the books. It belongs to that class of narcotics called sedatives. It diminishes vitality directly. It is regarded as a poison. It has peculiar effects on the vision, producing blindness. It acts on the circulation, and causes great depression of the whole system. Vegetable poisons act differently, some produce stimulation first, and *then* collapse; others, such as Helleborus, Tobacco, &c., produce depression primarily.

Gelseminum interferes with the functions of the heart. I heard the testimony of Dr. Barrett, from his statement I do not think there was sufficient disease to cause death independent of the drug.

The color of the fluid effused within the pericardium showed that it did not result from recent inflammation.

I should doubt whether the exhibition of a narcotic such as Gelseminum would hasten death without there existed organic disease.

Cross-examined.

What quantity of Gelseminum will prove dangerous in ordinary cases? I have no information that will justify me in saying. Unexpected effects are produced sometimes. I prescribed Veratrum-viride for Mr. Van R. who had gout, it nearly killed him. It was with difficulty I could save him. It produced frightful prostration, unexpected and unusual.

Mr. Lothrop. "It would have been bad for you if he had died, and Mr. Harbaugh had been prosecuting attorney."

Mr. Harbaugh. "He was not experimenting, if he had been and death resulted, I should have had him up, sure."

Dr. Pitcher—testimony resumed. "With skillful physicians and the wisest use of remedies, results will happen which could not reasonably be anticipated.

If a dose of Gelseminum was administered so small as not to produce the prostration which follows its use in large doses, would you expect death to result in so short a time as two hours?" "There is something not easily explained about it."

Saml. P. Duffield sworn. I am an analytical chemist and have been in business four years. I know the Gelseminum botanically. It is a poison. Classed as a nervous sedative. Produces muscular depression without destroying consciousness.

Chemists test their medicines on rabbits. Orfila proved his medicines upon himself and also upon animals.

The eclectics prefer the green root tinctures, but in my opinion the dried root tincture is the strongest. This opinion is purely theoretical, I have not used the drug. Those who use it most extensively prefer the green root tincture.

Dr. Abraham R. Terry sworn :

I am a physician, in practice thirty years. My attention to the Gelseminum was called in 1836. I know the plant but am not acquainted with it medically. It was referred to in lectures I heard in 1830. It is classed as a narcotic poison. Its exponent would be Digitalis. They both produce slow pulse, dilation of pupil, headache, cold extremities, stupor, sweat.

We find idiosyncracies in patients which no man could tell anything about previously, these make medicines act unusually and unexpectedly. A grain or two of Calomel will, in some cases, produce dangerous salivation.

"What produces pericardial effusion?" "General dropsical diathesis, pericarditis, rigor mortis. In cases of death from depressing influence there is more serum than usual. When the serum has been recently effused it will be of a dark color and bloody.

Persons die suddenly of heart-disease without having shown previously any marked symptoms of the disease. The diseases of the heart are wrapped in mystery. In angina pectoris there is intense lancinating pain and great difficulty of breathing, patients having severe attacks will die suddenly and *the post-mortem will not reveal a single indication of any disease.*

"What, in your opinion, was the cause of death in this case?" "I do not know, I could not in justice to myself or others say I did know."

Evidence for prosecution closed.

Dr. E. M. Hale called, and sworn on the part of the defence, the opening of the counsel being deferred, by consent, until after the examination of this witness.

I am a homœopathic physician of Jonesville, Michigan, and have been in practice fifteen years. I am acquainted with the Gelseminum, and have made it a special study, for the past seven years, by practical tests and scientific inquiry. I have written several articles respecting it and also a monograph.

It has been used in medicine since 1829, when it was brought to the notice of the profession by Prof. Tully. No other article in relation to it appeared for some twenty years. Its use was confined to the eclectic

physicians principally until about four or five years ago, when it was tested by homœopathists. I should look for information respecting it to the eclectic homœopathic school.

"What is the rank it now holds?" (Question objected to by the prosecutor and objection overruled). "It holds the first rank. It is an unrivalled febrifuge, exceeding all others, also very valuable as a nervine, and a powerful anti-spasmodic, ranking as such with Asafœtida. These are its three principal properties.

When administered in disease there results a general quieting of the nervous system; in fevers the heat is decreased, the excited circulation lessened, and perspiration induced. This results from moderate use of the drug, if carried beyond that point it will, similar to Ipecacuanha, Tartar-emetic, &c., produce muscular relaxation."

"What is your opinion in regard to its being a noxious or poisonous agent?" "It ranks properly with Valerian, Chloroform and Alcohol. It is not sufficiently poisonous to exert any dangerous or deleterious influences unless given in massive quantities. *I have used it in my practice every day for the last seven years.* It is not properly classed with hazardous or dangerous drugs, such as Opium, Arsenicum, Belladonna, Digitalis, Stramonium, &c. To class it in a relative point of view it would belong to the second or third series of the group of which Belladonna would be one. It is remotely connected with it in some effects. Valerian is a little narcotic, Opium a good deal."

"How large a dose may be given to healthy persons without endangering health or life?" "My experience leads me to believe that it would be almost impossible to kill a person with the tincture of Gelsemium."*

"In what forms is the Gelsemium administered?" "Powder of the dried root, tincture, fluid extract, essential extract, solid extract, resinoid and alkaloid.

How is the tincture prepared? (Objected to by Mr. Harbaugh.) "If the gentleman will tell us of the properties of the drug we will hear him, but we do not want to know anything about how the tincture is prepared down south, &c." Mr. Lothrop for defence insisted upon the question.

Judge Morrow.—"Mr. Harbaugh, you have detained us all day listening to your witnesses, not one of them had any practical knowledge of the drug in question, we have now a gentleman on the stand who is entitled to be considered an expert in this matter, he knows all about it, if you please let us hear him without interruption.

Dr. Hale's testimony resumed.

* NOTE BY DR. HALE.—This should be qualified by the following reasons:

1. There is not on record any authentic instance of fatal poisoning by Gelsemium, even when so large a quantity as one-half pint of the *tincture* was drank.

2. It would be difficult to destroy life, in a person of *ordinary health and strength*, with the *Gelsemium*, unless the drug was given in repeated doses, and with an utter neglect of all rational antidotal means. A large dose generally causes vomiting, which expels it before it can be absorbed, but even were it not expelled, the use of stimulants, (alcohol, capsicum and galvanism) promptly antidotes, as witness the case of the deck hands so treated.

3. The statement above, may be put down in the following words:—"It would be difficult to destroy the life of an adult healthy person, with the common tincture of Gelsemium, if the most ordinary antidotal means were used in case the drug induced too much depression." The strong *alcohol* of which the tincture is prepared, would probably be as fatal in its effects as the drug with which it is saturated.

In this, I of course do not allude to those strong preparations of Gelsemium, like the fluid extract, essential tincture, or alkaloid, all of which are so much concentrated as to render them poisonous by aggregated strength.—E. M. HALE.

"The tincture is prepared down south, (by the eclectics,) by filling a whiskey barrel with the green root, whiskey is then poured over it until it is covered. This is the mode of preparing the common green root saturated tincture. *There are no measurements or weight whatever.* Yet it has a definite strength because it is saturated. No tincture prepared in the ordinary way without heat can be stronger than such a saturated tincture.

The green root tincture is the strongest. It is supposed that the active principle is volatile, like Chloroform. Those who gather it are directed not to wash it even, until just before placing it in alcohol. All the eclectic physicians I have consulted, agree that the dry root is comparatively if not entirely worthless or inert.

I have used tincture Gelseminum from Dr. Lodge's Pharmacy for about two years."

"Do you consider that Dr. Lodge has competent knowledge." (Mr. Harbaugh objected and objection overruled.)

Dr. Hale resuming. "Dr. Lodge's tincture of Gelseminum is the best I have used.

Of this saturated tincture a dose of thirty, forty or fifty drops would not produce any hurtful or dangerous effects in ordinary cases. I have taken twenty-four, forty-five and sixty drop doses. It is given by eclectics in doses of ten drops up to one ounce (four hundred and eighty drops), and even one and a half ounces or seven hundred and twenty drops."

"Is there any well authenticated report of a case of poisoning from the Gelseminum to be found?" "*I cannot find one.*"

A skilful and prudent physician could administer a dose of thirty, forty or fifty drops without apprehending any hurtful effects."

"What is the practice of proving medicine?" "This custom is not confined to the homœopathic school, but is practised to some extent by others. Our custom is to give drugs to healthy persons in medicinal doses so as to causes symptoms; by this method we ascertain their rank, position and curative powers in disease.

Why do you prefer healthy subjects as provers? "Because in disease, the symptoms of the malady and the effects of the medicine are mixed in such confusion that no one could separate them.

Provers' Unions are established in the different European kingdoms and sanctioned by the governments, and the system of provings is recognized by the highest authorities of both schools.

I was present at the post-mortem examination made by Dr. Barrett. In my opinion the woman died from angina pectoris, or fatty degeneration of the heart. From my intimate experience with the Gelseminum and the symptoms of the woman during life, and the post-mortem developments, I cannot think that the Gelseminum had any agency whatever in producing death in this case."

"Does the Gelseminum produce fear?" "I never knew it to produce fear, it never causes anxiety, such as that produced by Aconite, Digitalis, &c. It rather causes indifference.

"In angina pectoris there is intense horror, the utmost conceivable anguish, eyes become fixed, glaring open, the patient will grasp at bystanders."

"Well, suppose such a case, what would be the appropriate remedy?" "The Gelseminum undoubtedly! The dose should be graduated according to the age of the patient, and the severity of the case. In a severe attack on an adult a teaspoonful might be given with safety. The Gelseminum is indicated in all spasms, the more intense they are the larger should be the dose.

M. Andral made post-mortem examinations in cases of death from angina

pectoris and found there was no organic lesion whatever, no change of structure that was apparent upon an accurate examination."

Cross-examined.

"Dropsy of the pericardium is a predisposing cause of angina pectoris."

"Was not the exciting cause of death the Geiseminum, and did you not assert this before the coroner?" "I stated that it was an *indirect* cause of death, but I have since modified my opinion, and I will state my reasons for doing so. I have killed a great many animals with Geiseminum, rabbits, dogs and cats, and I have found certain conditions in all these animals, invariably, such being entirely the opposite of those presented in the case of Margaret Washington. The differences were these: In the lower animals the heart was always relaxed and full of blood, the contractility of the heart was destroyed before death took place. This woman's heart was contracted firmly, and empty, save only a little shred. Finding this I cannot now say that the Geiseminum had anything whatever to do with causing the woman's death.

I could not succeed in killing dogs with the tincture, I was obliged to use the fluid extract, and it took eight drams of that, to kill a small spaniel.

The general qualities of this drug have been known for some time, but its special qualities are not thoroughly understood, and further provings are necessary."

Opening for the defence by G. V. N. Lothrop, Esq.

"Gentlemen of the jury:—Argument does not appear to be necessary. The evidence both for prosecution and defence, is of such a character that did I not think it might be of some special service to you and to my client I should forbear. I shall content myself briefly with showing what is the present condition of this case."

Objection by the prosecutor. "It is proper for the gentleman to state the nature of the defence he intends making, but it is not proper to enter into his argument now."

Mr. Lothrop.—"The prosecutor appears to be determined to be wrong in this case throughout. It is right for me to show the fallacy of the prosecution, I might review the case of the prosecutor and even make my argument here, if I insisted upon it.

What is the prosecutor's position? That the defendant committed the crime of manslaughter in unlawfully killing Margaret Washington. He does not charge any intention to take her life, he does not charge a willful, but only an unlawful act. How unlawful? To constitute unlawfulness, the giving of the drug must be accompanied by gross ignorance or gross inattention. The unlawfulness must consist in one or the other or both. I intend to be plain. You are arbiters and judges of an important question, and I purpose that you shall distinctly understand the defence made.

If a drug administered honestly and with proper purposes, without gross ignorance or gross inattention, though death may result, the act is not criminal. The act was a misadventure, not a crime. Were it otherwise, were the prosecutor's notions the law of the land, your most worthy and accomplished physicians would be inmates of your states prison. There is not a physician in the land, of any school of practice, if his business is extensive, but what has found at some time that his measures instead of prolonging life, have hastened death. Owing to the operation of hidden causes which he could not probe or control, his medicine has produced results which could not be expected. He intended to save life, unwillingly he has caused death.

Inasmuch as the prosecutor has signally failed to show either ignorance or inattention on the part of my client, I might rest here and say I will give no testimony. In the absence of any proof I am amazed that the prosecutor is willing to let the case go to the jury at all. The prosecutor has closed without producing a single physician who could swear within his knowledge that the Gelseminum is a poison and had produced death. No evidence as to what dose will produce fatal results, without any evidence that it has ever produced death in any instance. The prosecutor, failing to make any satisfactory case by his evidence, should abandon it at once.

You see the ground for my absolute amazement. There are^r in the United States probably over a thousand physicians who are acquainted with this drug Gelseminum, yet the prosecutor has failed to put one of them upon the stand. Why? Because there cannot be found one physician who uses this drug, and is well acquainted with its properties, that would be willing to testify that it caused the death of the woman.

Mr. Harbaugh.—The gentleman is arguing the case.

Judge Morrow.—It is customary simply to state what the defence intends proving, although the remarks of Mr. Lothrop are not exactly an argument.

Mr. Lothrop continuing.—Is it not right for me to show fully, clearly and certainly, the complete deficiency of the prosecutor's case?

It is incumbent upon the prosecution to establish definitely that the defendant acted with gross ignorance and carelessness, and yet they have not given you a scintilla of proof to make it out. He starts out with the assertion of the poisonous character of the drug, and then produces no case of poisoning or proof of its noxious qualities, or a particle of testimony showing recklessness in its administration. In my humble judgment, the prosecutor is morally bound to abandon the case; let him state honestly that he has been misled; that my client has been unjustly accused. He should be the foremost to step forward to justify him.

The defendant is a homœopathist. Hahnemann the founder of the system of homœopathy, introduced the practice of proving medicines on healthy persons. Whatever may have been his merits, he is now recognized as having been a great and original thinker, a man of great learning and philosophical mind. His teaching was, that a medicine, or agent administered to a person in health would produce symptoms similar to the disease which it was appropriate to cure. The principle lies at the foundation of the new practice. To carry it out, provings are resorted to. Drugs are administered to healthy persons, their effects carefully watched and recorded. Upon knowledge thus obtained, the drugs are prescribed to the sick. This is a philosophical course. If drugs are given to the diseased the effects are confounded with those of the malady. Dr. Pitcher has told you that he tests his medicines on his patients. We admired his candor and I have personally, the deepest respect for him, but in this matter he cannot be right. When the drugs are administered to the sick, the danger is two-fold; first, the effects are mixed with those of the disease, and second, when he has discovered that he has given the wrong remedy, it may be too late to give the right one. In Europe the proving of medicines is done under governmental sanction, in this country it is left to private hands.

The Gelseminum, or yellow Jessamine, is a plant growing wild all over the southern states, it is not found I believe in Europe. It may have been growing from the beginning of the world, but its value as a medical agent was only discovered recently. Accident, that great resource of medicine, brought the Gelseminum into use. The slave of a southern planter ga-

thered the root by mistake, it was administered to his master and cured a severe fever. The eclectics adopted it. After a time it was tested and introduced by the homœopaths. They have proved it, and are still testing it. The prosecutor thinks that the profession are already well enough acquainted with it. Instead of this, those who know the most about it, tell us that the subject is far from being exhausted. What folly to think that our knowledge of any subject can be exhausted. We may be vain enough to think we know all, but to-morrow a man will rise and put to shame our idle conceits, he will show us something we failed to see.

A few years ago the defendant came to this city, he was a regularly bred student of medicine, and zealous for the advancement of his profession. In addition to his practice he has kept a pharmacy where he prepares and dispenses medicines to his professional friends, and we shall show you that he is a physician of good standing, and also that he has competent knowledge as a pharmacist. In the pursuit of his legitimate business he prepares a tincture of the *Gelsemium* from the dried root, the demand for the tincture being greater than could be supplied from the green root, on account of our national trouble cutting off the southern supply. This tincture he administers to himself, to several of his children and to the colored servant. The tincture was prepared at the ordinary temperature with dilute alcohol.

We shall prove :

1. That the *Gelsemium* is a well known and recognized medical agent, and not a poison in the proper sense of that term. That it is used in doses as large as one hundred drops without producing painful or hurtful effects, We have no record of any fatal case of poisoning, but if given in massive quantities, the patient is found to sink away into a profound stupor of insensibility, and present nothing of the pain, anxiety and distress, that was present in this case.

2. That it would not be possible for so small a quantity of *Gelsemium* to produce death.

3. That the woman died from angina pectoris, a disease characterized by excessive anguish, labored respiration and sudden termination in death.

When we establish these things it will be shown how unjustly and wrongfully the charge of manslaughter is made against Dr. Lodge. If he were a quack he might desire this prosecution as an advertisement, but as an educated physician, pursuing that practice which is the best according to his enlightened convictions, the trial is necessarily painful. Though he will most certainly go out of this hall completely justified in the opinion of every honorable man, yet the idea of such a trial as this is unpleasant. It is not of his choosing, he is accused and must defend. He will have, however, a triumphant vindication, he will be justified most completely and certainly "

Dr. Joseph A. Albertson sworn. "I am a practitioner of medicine of Detroit. I saw the colored woman before she died. Dr. Lodge told me he had given her about thirty-five drops of the tincture *Gelsemium* at five o'clock. About seven she came into his room hurriedly, exhibiting intense anguish, great fear and labored respiration. She had a severe suffocative spasm, struggled on to the floor, and then became insensible. I learned these particulars on my arrival. I found her lying upon the floor, extremities cold; no perceptible pulse; *eyes staring*; jaws rigid; there was a slow catching respiration for a few minutes. She died within ten minutes after I reached the room.

I am acquainted with the *Gelsemium* and do not think that it is a poison in the ordinary acceptation of that term. I have given two drams to a

patient during twenty-four hours, and I believe that a dose of forty or fifty drops could be given without apprehending any danger."

"What is Dr. Lodge's reputation for skill and competency?"

Question objected to by Mr. Harbaugh, and objection overruled.

Ans. "I should say without hesitation, that he has, by common consent, a place in the front rank of the homœopaths of Michigan."

Depositions read.—DR. CHARLES J. HEMPEL. "I am acquainted with the Gelsemium. It is not mentioned in any work on Toxicology as a poison. When used by homœopaths, it is given in comparatively small doses. The allopathists and eclectics use it in larger quantities. The smallest dose is about fifteen drops of the tincture, but the ordinary or normal dose is fifty or sixty drops, the dose is increased up to as high as 240 drops. In my knowledge, professional or practical, I have never known a dose from 15 to 240 drops to do the slightest injury, or in any manner produce any evil or deleterious effects. The dose of 240 drops may produce temporary medicinal effects, but nothing permanently injurious to health or life."

"State the theory and practice of the homœopathic school in respect to the provings of medicines?"

"It is a fundamental principle of the homœopathic practice, that a drug in order to cure a disease must be capable of producing an analagous or similar train of symptoms in healthy persons. This rule makes it necessary to prove on healthy persons the effect of medicines before using them as medicinal or remedial agents. This is called "proving" medicines. In proving drugs we do not use them necessarily in small doses. Some physicians commence with small doses. In proving we use material doses varying from the smallest dose up to the largest consistent with safety. The physician starting with a general knowledge of the agent, whether it is a dangerous, a powerful or a mild medicinal agent, he graduates in his provings the size of the dose accordingly, and then carefully observes or studies the effect produced both in their nature and in the organs affected, and their order chronologically. In the opinion of eminent physicians and medical schools, this practice of proving medicines by administering them to well persons is considered legitimate and proper. A physician can only know the effects of medicines by administering them to either sick or well persons. As a general rule, you cannot judge what effect a medicine will produce on the human system from administering it to one of the lower animals. It would not be safe to rely upon this. The method of proving medicines just related is recommended by all the modern professors or practitioners of medicine of distinction. Pereira, Trousseau, Sundelin, Hebra, Parkinje, Kissel and all the eminent authorities of the age approve and practice this method. We claim that it is an application to medicine of the Baconian method of induction. In Europe there are societies known as "provers' unions." They have by-laws, and are under the direct sanction and control of the governments. The most eminent physicians belong to these societies.

In my opinion as a medical man acquainted with the properties of Gelsemium, I think it would be perfectly safe and prudent to administer thirty-five or forty drops of it to an adult female. In my judgment, no evil or deleterious effects could rationally be anticipated to result from such a dose. In such a case, if death soon after ensued with apoplectic symptoms, I should not say the death was produced by the dose. I should say further, and with the highest medical certainty, that death *could not* be produced by such a dose. If death should occur soon after the administration of such a dose, it must be accounted for on some basis entirely different from Gelsemium. * * * * In experimenting with poisons, the prover would

not experiment upon strangers. Prudence would require that a physician should inquire into the constitution, habits of life, &c., of the person, before he experimented upon him or her by giving them poisonous drugs."

Dr. John King, (Eclectic Professor and author, Cincinnati).

"In the ordinary acceptation of the term, I do not consider it (the Gelseminum) as a poisonous drug at all, or a dangerous one. * * * I have in my own practice given it in many cases in doses of a tablespoonful every hour, continued for several hours and with beneficial results.

Dr. H. H. Hill: In the summer of 1853, late in June or early in July, I had five barrels of tincture of Gelseminum shipped from Vicksburg, Mississippi. The boat grounded on a sand bar on the Ohio river near night. I happened to see the barrels on deck, they having been taken out of the hole in shifting freight. I requested the mate to have the barrels lowered again, as they contained medicine, and it was not safe in case the hands should get at them. The next morning another boat made its appearance, and the captain told us we had better get aboard that boat as it was of light draught. As we were getting aboard, I heard two physicians say to the captain that some of his men had been drinking alcohol or some poison, and two or three of them were about dead. They told the captain to give them an emetic. Being well convinced what they had been drinking, I told him not to do so, as they were already too much relaxed, and that they needed stimulants. During the night they had opened a barrel and drawn a bucket full, as I learned from the men, and had drank it from tin cups, it was supposed from half a pint to a pint each. They looked very much like dead men, *their eyes were closed*; circulation very feeble; no pulse perceptible; and *breathing so low that it could hardly be perceived at all*. Two of the men were taken on board the other boat and the other three were left. I went up the river with the two men and gave them stimulants, and in less than two hours they were able to walk. *They recovered*. When I got to Louisville, there was a statement in the Louisville Journal that it was supposed that the three men who were left behind were dead, they having been left in an apparently dying condition. Some three days afterwards the boat got up, and another statement appeared in the paper that stimulants had been given to them and that *they had recovered*."

Dr. Z. Freeman.—"I am acquainted with the properties of Gelseminum. It is what is called a nervine and a relaxant. It relaxes the muscular fibre of the system and the contractile tissue, and quiets nervous irritability without producing narcotic effects. It is also in large doses a sedative. A person in ordinary health might take half a drachm two or three times a day without injury: that is, the effects of weakness, prostration, ringing in the ears, dimness of vision, &c., would be transient and pass away in a few hours."

Dr. James S. Douglas, of Milwaukie.—"Is acquainted with the Gelseminum. Its known properties do not rank it as poisonous or dangerous. It is given in doses of 40, 50, 60 and 100 drops without any observed hurtful effects. The method of proving drugs by the homœopathic school of medicine, is to administer the drug to be proved to persons of apparent health in varied dose and strength, in order to produce upon the subject all the changes and modifications of sensations and functions, that is all the symptoms which the drug is capable of producing, compatible with the safety and well-being of the subject, and carefully noting all these changes or symptoms. One dose is allowed time to exhaust its action before another is given. As drugs are found to produce different effects in large and small doses, in the concentrated tinctures and the different potencies and dilutions, a drug is not fully "proved," in other words, all its effects ascertained,

until it has been proved in these various forms. Again, as drugs produce modified or different effects upon different sexes, ages, temperaments, and constitutions, a drug is not fully "proved," or all its modified effects ascertained, until it has been proved by or upon the two sexes, and all ages, constitutions, and temperaments. The principle upon which such provings are made is based upon the demonstrated fact, that drugs in comparatively small doses cure in the most direct, safe, and perfect manner diseases characterized by similar symptoms to those produced on the healthy by the same drugs in comparatively larger doses. It follows that, in order to administer drugs scientifically or successfully, we must fully understand what symptoms they produce on the healthy. Hence the necessity of provings."

Dr. John Ellis.—"In the school of medicine to which I belong drugs are given to the healthy for the sake of ascertaining the symptoms which they cause, in order that the physician may know when to give them for the relief of the sick. Such "provings," as they are called, are regarded of vast moment to the welfare of the community, and those who engage in making them are regarded as real benefactors of our race. * * * * The more violent symptoms are developed by giving concentrated tinctures and large doses of strong preparations, and this is important. It could never have been known, that Veratrum, or white Hellebore and Arsenic are the chief remedies for the cholera, if these remedies had never been taken in doses sufficient to cause vomiting, diarrhoea, cramps, prostration, and other symptoms resembling cholera. It is also very important to obtain the less violent symptoms which an article is capable of causing, as they are often more characteristic of the particular drug than the severe symptoms. This is accomplished by giving the potencies. The purposes which are accomplished by both modes are the formation of a materia medica upon a scientific basis, which enables the physician to cure the sick with a greater degree of certainty and safety than before such provings were instituted, and also enables the physician to distinguish between the symptoms caused by disease and those caused by his remedy. By the aid of the provings already made, we are able to treat the cholera, pneumonia, all febrile and inflammatory diseases, and in fact, all diseases with a success unknown before such provings were made; and what is very important, we are able generally to cure with doses so small as to cause no unpleasant symptoms, and leave no troublesome effects behind. In fact, the system of drug proving is among the most useful and important discoveries ever made in medicine."

Dr. John F. Gray.—"All drugs are injurious to health,—all are poisonous. I have not known of death being caused by Gelseminum. The methods of proving the virtues of drugs for their scientific use as remedies are two: First, with large doses, such as are commonly given in the allopathic practice; and second, with fractions of such doses. The object to be attained by the first method is the disclosure of the efforts which a healthy system would make to expel the noxious agent, such as vomiting, purging, sweating, &c., &c., with all their concomitant states of body and mind, with a view to the speedy and safe removal of similar sufferings when they arise from other causes. This class of provings I call the revolutionary, as distinguished from the second, which is called the specific. The purpose answered by the second, which is the giving of fractions and diluted forms of the doses used in the common practice, is the disclosure of the latent healing powers of drugs or medicaments which very seldom appear in the system, overwhelmed by the revolutionary doses. By the tests made with doses so small as not to awaken a powerful reaction for their expulsion, a registration of the healing virtues of drugs is attained which is indispensable.

ble for the rational treatment of chronic diseases. The first kind of trials relates more to the cure of acute and immediately dangerous maladies, and the second, as said, to the cure of inveterate and constitutional taints. My opinion is, that the provings for the first class of effects may be of Gelseminum, as of every other drug, in doses of the size commonly used in the practice of the various branches of allopathy. By "provings," when carefully and fully made in both modes, the materials for healing disease are greatly enriched; for the experience of all ages confirms the maxim of homœopathy, and without just such provings the discovery of the health restoring analogy between the powers of a drug and the cause of a disease were nearly impossible in any case, and absolutely so in a vast majority of human maladies."

David E. Harbaugh, Esq., for the Prosecution.

Gentlemen of the Jury: you have been apprized of the character of the offence with which the defendant stands charged,—manslaughter. This is quite different from that homicide which is generally denominated murder. In that, you know, there must be an evident intention to take life. Manslaughter may result from an act which is itself unlawful, or from a lawful act done in an improper manner and without due caution. You are called upon to make two inquiries: first, as to the killing of the woman by the defendant; second, are there any circumstances showing that the killing was justifiable or excusable.

If a person does an act which accelerates the death of another, it is manslaughter. A man may be laboring under an organic affection of the heart, so that in all probability he would die in twenty-four hours, and by the unlawful act of another he is slain, it is manslaughter. You comprehend it,—you understand it. The same force that would kill a diseased man would not injure a robust or strong man.

It is fair to presume, that if this woman had not taken the Gelseminum, she would have been alive and well to-day. There is no other way of satisfactorily accounting for this woman's death. The law attributes great importance to life; government is framed for its protection; when death occurs in an unusual manner, it is the duty of the officers of the state to inquire in what manner and by what means that life was lost to the country. If there is suspicion of fraud and violence, an investigation is properly called for.

Margaret Washington, a colored woman of twenty-five or thirty years of age, robust in form, of good health, pursuing her ordinary avocation on the morning of her death, never complaining, never asking for medicine; on the 15th of January, 1862, at five, P. M., was in apparent health, in possession of her physical abilities, the Gelseminum was administered to her by Dr. Lodge; at seven o'clock she was dead! Did that kill her? Are you not satisfied in your minds that that killed her?

In what way was Dr. Lodge justified or excused in giving the Gelseminum to that woman? He says it was given to prove its properties. *That is an after thought.* He knew all the effects of the drug, and he gave it merely to test the strength of the tincture made from the dry root. He took the medicine himself, and gave it to his children, and the effects produced on them showed him that the dried root could not be inert. It was unnecessary then for him to experiment upon the deceased at all, and it was rash, reckless, and careless to give her forty or fifty drops of the strong tincture he had prepared, and which acted so powerfully on himself and family. Had he any right to do so? If fatal consequences resulted, is he not responsible?

Did she die from the Gelseminum? There is something extraordinary about this; the defendant has changed his theory, an entirely different cause of death is ascribed now. Before the coroner it was dropsy of the heart and Gelseminum, now it is *anginous* (!) pectoris. Why has he changed it? The testimony is conclusive and overwhelming, that the Gelseminum was the immediate cause of death, and nothing else.

We say that Dr. Lodge's act is inexcusable and unjustifiable. Had not the woman taken the drug she would have been alive at this moment. Look at the circumstances and investigate them. If it caused death, he is guilty; he cannot be excused or justified; it was an unlawful killing.

Charles P. Crosby, Esq., for the Defence.

The highest object of judicial investigation is the ascertainment of truth. Courts are organized for this purpose. It is this which has called us here, and you, gentlemen, have the highest duty to perform in deciding as to the truth in the present case.

The defendant, Dr. Lodge, is charged with manslaughter. I shall not review all the testimony. The prosecutor assumes, that the drug administered was a poison, and that there was inattention and gross neglect in its use. The evidence has shown beyond any question, that the dose which was given Margaret Washington never yet caused death in a single instance. Doses larger are given in sickness, and Drs. Ellis, Gray, Hempel, Douglas, King, Hill, Freeman, Hale, and Albertson all testify that such a quantity is perfectly safe for any one in health.

The prosecutor tells you, that Dr. Lodge's statement that he gave the drug for a "proving," was "an after thought." It is a little singular, that such a charge should be made when the facts show conclusively, that the drug was given, not idly, or wantonly, but for a purpose, and that purpose the testing of its qualities,—in other words, "proving" it. What are provings? Simply discovering by actual experiment what effects drugs produce on the human constitution, so as to obtain knowledge to guide in their administration in disease. The Gelseminum has been proved, but no physician can say he has yet ascertained all the properties of this drug. Every homœopathic physician who has attained any eminence in his profession is interested in these provings; the most skillful of them are engaged in these provings every day. And it is right and proper, that medicines should be thus tested upon persons of all ages and of both sexes, and of all conditions. There are different susceptibilities in relation to the action of drugs in different persons, and it is necessary to test the same medicine on a great number and variety of persons, and not trust or rely upon those made upon any one individual. The objection of the prosecutor, that proving was not necessary because the Doctor already knew the properties of the drug, is extremely fallacious.

The prosecutor took up this case with the assumption, that all provings of drugs or poisons is unlawful,—that the Doctor had no right to give a drug or poison to a healthy person. Twenty years ago, if a man had stated that he could send a message across the continent by lightning, he would have been deemed insane. Galileo was confined in the inquisition because he taught that the earth revolved on its axis. In London now the street railways of G. F. Train are indicted as a nuisance. 'Tis needless to multiply instances, the history of the world shows us that the pioneers of science have been the scorn and derision of the people they served. It has been so in the past, it is so now. A man's contemporaries do not recognize his worth or services. Drs. Barrett, Lauderdale, Pitcher, and others, they

do not prove medicines on healthy persons. They know all about medicines without thus testing them. What have they been able to tell you about the Gelseminum? As to the rival schools I care but little, I have a predilection for the physician that cures me, and care not whether he uses Yellow Dock or Yellow Jessamine. But I must accord to those who enter upon the laborious and self-sacrificing work of proving drugs a word of praise: I consider, that the one who proves a drug for the purpose of becoming better able to relieve suffering and cure disease, is actuated by one of the holiest and loftiest purposes that can actuate a human being.

The prosecutor tells you, that a physician is liable if he administers anything that accelerates death. To see the absurdity of this you have but to recollect the testimony of Dr. Pitcher. He is called to the bedside of Mr. Van R., who has gout, he prescribes a medicine which acted in an extraordinary manner and nearly produced death. Suppose that it had killed him? Would it not be outrageous to say he would have been guilty of manslaughter? It is utterly ridiculous to state, that a medical man is responsible for every mistake he may make. If a physician does all in his power, acts with ordinary skill and prudence, he is not responsible though death may result.

But we do not admit that the Gelseminum caused the death of this woman. Our witnesses prove that it did not, and the prosecutor's witnesses *do not* testify, that it was *the* cause of death. Dr. Pitcher says in regard to Gelseminum: "I know nothing about it." Dr. Terry thinks the post-mortem of Dr. Barrett was no examination at all, and when asked what in his opinion caused Margaret Washington's death, said finally: "I do not know." Well, I do not know,—you do not know. We bring the best scientific knowledge to bear on the subject, we bring the evidence of the most learned men, and those who are well acquainted with the Gelseminum, and these testify that the drug did not cause death.

The Prosecutor rings the changes on Dr. Hale, having modified his opinion. Dr. Hale acknowledged frankly, that he has changed his views, and gave the very best reasons for his change; these were stated fully and frankly. And Dr. Hale was right in doing so. I believe the woman died of angina pectoris,—that terrible disease that kills in an hour, and leaves no sign of its fatal course, no change of structure, and such a death, of all others the most unlike what we must suppose death by Gelseminum would be. The fact stated by Dr. Hale, that in the animals killed by Gelseminum the heart was always relaxed, and that in the case of Margaret Washington the heart was firmly contracted, is one of the most conclusive facts that we can present, showing that the woman did not die in consequence of the administration of the drug by Dr. Lodge. And Dr. Hale's testimony must have more weight than all the witnesses of the prosecution, they were all ignorant of the drug; Dr. Hale is thoroughly posted up in regard to all its properties, and is the author of a book devoted to its consideration.

The Prosecutor will have it, that the Gelseminum is a very dangerous and poisonous drug. You will recollect the testimony of Dr. Hill in relation to the Mississippi deck hands, they tapped the barrels containing saturated green root tincture of Gelseminum, drank it in quantities of half a pint and more, and yet every one recovered. How poisonous must be thirty or forty drops. Could the Gelseminum have hastened her death? Dr. Barrett testifies distinctly, that there was no organic disease of the heart, and Drs. Pitcher and Terry both say, that unless there existed organic disease, such dose of Gelseminum could not have accelerated her death. There is no danger in giving the Gelseminum in ordinary doses to persons in apparent health. This woman was to all appearance well, had no disease that could

be discovered; she was a proper subject for the proving, and the giving of it was accompanied by no circumstances showing the slightest inattention or carelessness.

I intended to say but little, because the case requires no labored argument. If you take into consideration the facts and circumstances of the case, the nature of the drug, the apparent health of the woman, the Doctor's position and knowledge, and the acknowledged benefit and legality of proving drugs, you must exonerate him fully. There is nothing about the case which would justify you in giving a verdict against Dr. Lodge. Dr. Lodge has been driven into this court by the prosecution. The Prosecutor has told you he has no desire to convict the defendant, he is merely performing a legal duty. What we have to contend with here is an evil of the most fearful character—*ignorance*. This is at the bottom of the whole prosecution. If proper steps had been taken in the commencement of the case, and information sought for, there would have been no trial here. As to the result I have no fear: I should be untrue to myself, to the principles of truth and justice, if I believed for a moment in the possibility that you can render a verdict of guilty. It would be a rank infamy and shame. I leave the case to you, expecting at your hands a vindication of Dr. Lodge for his practice as a man and as a physician.

G. V. N. LOTHROP, Esq.—Were it my object to obtain for Dr. Lodge merely a legal discharge, my office would be a very easy one. The law presumes innocence until guilt is proven, and as the prosecution has utterly failed to make out a case, he must receive an acquittal. That he is to be discharged was determined before I stood upon my feet. But Dr. Lodge looks for a complete justification, and he shall not look in vain for so poor a boon at my hands. Not a medical justification; were this necessary Dr. Lodge would enter upon it himself, and he would do it more amply; and, in the forum of medicine, in the world, he will vindicate himself fully. That justification is now passing, and will give this case an unlooked-for importance. It may hand down to posterity some names which would otherwise pass into oblivion, as the precious amber preserves a few flies.

The prosecution has made no case whatever,—absolutely no case. No lawyer will pretend to say, that the prosecution has made a case which we can rightfully be called upon to defend. And when the gentleman so utterly failed to prove anything against my client, I looked to him for the vindication which he should have given. In England, in a case reported by Adolphus and Baron (*Rex v. Van Butchel*, 3 *Car and Payne*, 629), where the accused, a medical man, was charged with manslaughter, the facts showed a case where physicians might differ. Baron Hallock inquired of the prosecutor (Adolphus): "Do you think you can carry the case?" He replied: "I do not think so." The case was stopped—the judge saying, that he was afraid to allow the case to go to the jury, as the idea might become prevalent, that a regularly educated medical practitioner was liable to prosecution whenever an operation failed.

In another case Lord Ellenborough decided that a medical man cannot be charged with manslaughter, unless he has been criminally inattentive. Would it not be most extraordinary that the members of a profession dealing with that wonderful being, man, should be responsible for more than the exercise of competent skill and reasonable attention? Yet in the face of these legal decisions, at this day, at this hour, the prosecutor dares to drag a skillful physician into court without one particle of proof that he has been guilty of any offence. No proof, whatever, that the drug given could or did cause death in this instance. That such a case as this should go to a jury at all, shows the frailty and imperfection of our laws. Let us

look at the legal points in this case. What is the prosecution bound to do? To establish guilt, he must prove: 1. That death resulted from the administration of the drug. 2. That in its administration he showed gross ignorance, and criminal inattention. They must prove the death, trace it to the act of the accused, and then show that that act was not in itself innocent. Have they done so?

The gentleman when he moved in this prosecution, did it on the ground that the defendant's act was unlawful, that it was unlawful to administer drugs to healthy persons for the purpose of ascertaining their effects upon the constitution. That position is not taken now. It is abandoned.

The prosecutor. "The question is not involved."

Mr. Lothrop. It is, directly and materially. The nature, the quality of an act is always in question. It is important that it be distinctly settled not only that provings are lawful, but that they are at the foundation of all rational medicine. Not homœopathy, allopathy or eclecticism, but medicine in the broadest, widest and most beneficent sense.

The prosecutor has not produced a medical witness who has testified that he is well acquainted with the Gelseminum, he could have produced such evidence easily, there are over a thousand physicians using it, not one of them called. Why? *I repeat they dared not.* They could not have produced such a witness without, at the same time showing that the Gelseminum did not and could not have caused the death of this woman. Is the prosecutor then permitted, in the spirit of the law, to go to the jury with such evidence, or rather without any evidence. There is one physician, however, who did give an opinion that the Gelseminum had been a cause of death. Who gave it? Dr. Charles H. Barrett. I trust the gentleman is here. Was he warranted in giving any such opinion? On what grounds? "In my opinion," said Dr. Barrett, "the medicine combined with the dropsy of the heart produced death." Now on what sort of foundation does this young physician give such positive testimony. He does not give it hesitatingly, no bashfulness about it, he walks up to it and says it caused death. Who is Dr. Chas. H. Barrett? A young physician who has been practising medicine, he tells you for five years. The prosecutor also examined Dr. Pitcher, a practitioner of forty years' standing, also Dr. Terry, who has been practising nearly as long. I need not refer to the reputation of these gentlemen, you know how deservedly high it is, and what do they say? Does Dr. Pitcher tell you he is satisfied that it caused the death of the woman, No, and Dr. Terry says with frankness, "I do not know." Dr. Barrett had no such hesitation. "Fools rush in where angels fear to tread."

What sort of a post-mortem examination did he make. A person dies suddenly, he is called upon in his professional capacity to make the post-mortem, he is told that there will doubtless be found trouble about the heart. What does he do;—after going through the brain, he looks at the stomach, then the pleura and now afterwards the heart, then he comes down to the pericardium and finds by palpation that there was fluid within; he opened it, of course, very carefully and poured out the fluid in a suitable vessel for measurement. No such thing! He thrusts in his knife and lets the fluid escape. Now he tells you there were about three ounces of serum there. How does he know? "Guesses." He guesses at it! yet prepared to give positive testimony.

Then as regards his knowledge of the Gelseminum. He says it was the cause of death, yet he does not tell you that he ever knew it to act fatally, he does not tell you of a single fatal case of poisoning with the Gelseminum. He cannot tell you what organs of the body are affected by the drug, yet it

caused, in his opinion, death here. What is such an opinion worth? It is simply worthless. And that a man should pretend to give such an opinion in an important case, without any accurate knowledge whatever, is wicked and atrocious. In this case a physician's reputation and liberty is involved. The happiness of him and his family depends upon it. Should not such an investigation be entered upon with some sense of responsibility, and yet he makes an examination as was properly estimated by Dr. Terry, when he told you it was "not worth a single fig." I shall do this young man a service if I teach him, that before he attempts to give a positive opinion he shall give the matter careful examination and study.

It is not left for me to utterly confute Dr. Barrett. The very first physician the prosecutor called, after Dr. Barrett left the stand, not only destroyed his testimony, but *buries him* professionally. And Dr. Barrett's testimony is all the prosecution has to rest their case upon, with a post-mortem examination "not worth a fig." Dr. Barrett testifies there was no organic disease of the heart, and Dr. Pitcher tells you that in the absence of organic disease the Gelseminum could not accelerate death. Where is Dr. Barrett? Safe beneath and beyond all scientific and reasonable criticism. Dr. Pitcher leaves the case thus, the Gelseminum could have had no injurious effects. Dr. Terry agrees with Dr. Pitcher and not with Dr. Barrett. Dr. Barrett's testimony is invalidated. 1. He has given us this insufficient post-mortem examination. 2. He has no knowledge of the drug. 3. His testimony and opinion is contradicted by Dr. Pitcher and Dr. Terry.

The prosecution has utterly failed. They start out with the charge of gross carelessness and rashness, and have failed to prove anything resembling it. They are bound to show gross ignorance or criminal inattention, they have not proved either. They have not attempted to show ignorance. He has been but three or four years in the discharge of his professional duties here, but thirteen years ago the professors of a Medical College testified to his competence, he is known as an intelligent and competent physician, no man has dared to impeach his knowledge, and for industry, intelligence and character he ranks high with his professional brethren.

The prosecutor charges rashness. In what? What were the circumstances showing rashness? The prosecution is dumb. They have nothing to prove which shows rashness or carelessness. A drug, which from its nature is not dangerous, is given in an ordinary dose, and not a man has testified that the act of thus giving it was rash.

The prosecutor has failed to prove that the death was caused by the drug, and failed to show any imprudence in its use. Were a mere acquittal required I should stop here, but I propose to brush away some of these cobwebs. The mountains of prejudice and ignorance are slippery.

A physician attempts to prove a drug. The subject of the proving dies suddenly. He is charged with killing her. In such a case, the very first thing which a fair man would have done, would be to call upon those who have been for the past ten years in daily use of it. And a jury in such a case have a right to say to the prosecutor: As you have not brought us the testimony of any physician who has dealt with the drug you can expect nothing from us. Evidence concerning the properties of the drug exist, you could have brought it, you did not."

I am not here to procure an acquittal. Had I purposed to secure that only, Dr. Lodge would have said, "Sir, you are no adequate counsel for me, I must be justified after your forms in the fullest manner, I have been a practitioner in good standing for thirteen years, I claim that I have in this very matter performed a conscientious duty, I must go forth from this in

vestigation exonerated." It was not necessary for him to spur me to this duty. I came prepared to strike that low creeping ignorance which was behind the prosecution, and I have done so.

Let us look at the character of the evidence produced by the defence, not men of any one school of practice, but the best living witnesses that could be procured in regard to this drug. From Philadelphia we have Professor Hempel; from New-York, Dr. John F. Gray and Professor Ellis; from Milwaukee, Professor Douglas; from Cincinnati, Dr. Hill and Professors King and Freeman; from Michigan, Dr. Hale, all men of ability and all well acquainted with the Gelsemium, and Dr. Hale, a laborious student of this very drug.

(Mr. Lothrop read extracts from the deposition and commented upon the evidence). It is not the intention of the law to deal with trifling issues. The prosecutor has no right to present a doubtful, plausible or suspicious case, and the present one is not even one of these. It is shown that the Gelsemium is not a dangerous drug, and there was no rashness or want of precaution in its use. May it not, however, produce hurtful effects in some cases? Yes, and so may many harmless substances prove hurtful to particular individuals on account of some strange idiosyncrasy. Lewis, in his "Physiology of Common Life," tells us of a man to whom a mutton chop was poison. Coffee is a grateful beverage,—I cannot drink it. It affects my nervous system so much that I have been compelled to abandon it entirely. The Gelsemium is not a poison in the legal sense. In law, a poison is a drug or substance which in small quantities will produce dangerous or hurtful effects. Arsenic, Opium, &c., are so classed as poisons. The Gelsemium does not rank with these, but with Chloroform, Alcohol, &c.

The prosecutor remarks that common sense would show that such a drug as Gelsemium must be dangerous, and the dried root stronger than the green. I know not what my brother's ideas of common sense are. If we take the verdict of common observation and experience, it is that living plants are always preferable whether wanted for medicinal or culinary purposes. In regard to the Gelsemium, all the physicians who use it extensively prefer the green root tincture.

The prosecutor says when the Doctor ascertained that the dried root was not inert, he should have stopped there. Why? If he had only desired to test the strength of the root he would, but he desired to prove it and test its properties.

The prosecutor thinks that these provings are of doubtful validity and utility, but they are doubtless the sole foundation of scientific and rational medicine. I do not employ the new system, I have been attached to the old. Yesterday I asked a leading member of the allopathic faculty, "why do you not give us these provings? I think it is a reproach to your system of practice, that you do not test your drugs before you prescribe them to the sick." What was his reply? "I do, I test my drugs on my own person." That very answer showed the weakness of his school of practice. It confessed that provings are necessary and that they are not followed to an extent sufficient to make them useful. Professor Hempel claims that it is the Baconian method of induction applied to medicine. If medical practice is not to be mere conjecture, we must have a philosophical basis for it.

If it is asked why the homœopathic system of drug-proving is not adopted, we can only say that prejudice is not easily overcome. Dr. Harvey discovered the circulation of the blood and was denounced by his contemporaries. Not a physician of forty years of age acknowledged the discovery during the life of Harvey. Inoculation was introduced by Lady Mary Wortley Montague, she practised it upon her own children and was

called "an unnatural mother." Jenner, after twenty years of experiment and investigation, gave us vaccination, which has stayed the ravages of the fearful scourge small-pox, but he met with ridicule and neglect. Dr. Jenner occupied twenty years in careful study, observation and experiment, Dr. Barrett has no such difficulty in forming an opinion in relation to the action of a medicine that he knows nothing about. Jenner was execrated and ridiculed, and men equally as wise as the opponents of Jenner now ridicule "provings." The new practice is not accepted, because the old school is unwilling to learn from the new.

These provings will never cease. The scientific physician is ever on the alert for improved methods of treatment; new diseases appear, old ones change; new remedies are called for, they must be properly tested and proved to insure medical progress. I am vindicating Dr. Lodge beyond the requirements of this particular case, not for homœopathy, not for any particular school of medicine, but for myself, for my family, for my children, and for your children; we are all interested; I demand in behalf of medical advancement, that there shall be a *recognition of this philosophical basis for medical practice*. That provings shall be continued, not idly, not wantonly, but properly and prudently.

But I am asked what this woman died of. I am not bound to answer. Give me sufficient knowledge and I will tell you. Dr. Pitcher with all his learning cannot tell you. It is all conjecture. We believe she died of angina pectoris,—a disease characterized by severe pain, great breathlessness, intense fear, &c; the woman showed these signs, and these symptoms are never produced by Gelseminum. But conceding, for mere argument's sake, that the drug caused her death, there was nothing in the woman's condition, or in the nature of the drug, to lead him to anticipate that it would act injuriously, and he is therefore not responsible. To say that the Gelseminum caused death, is just as mysterious and extraordinary as death from angina pectoris.

Sufficient has been introduced in my argument to secure Dr. Lodge's vindication. He was acting in the legitimate performance of his duty as a physician; the drug he used was not a dangerous one, and he gave it in less than a common dose, in such a one as has not been known to produce death or injurious effects; the form of death was such as cannot be attributed to the Gelseminum, and that it is far more correct to assume that she died from angina pectoris or some other heart-disease, than that she died from the Gelseminum. Dr. Lodge is placed in an equivocal position. It is evident, that he acted with reasonable care and skill. We are all liable to be unjustly accused. If we can all justify ourselves as well as Dr. Lodge can himself, it will be well for us. I congratulate myself, that I have been permitted to bear a part in his defence when thus unjustly assailed. I am no partizan. Though bred in another school of practice, I am open to conviction. I say that Dr. Lodge has nothing to dread. He will go from this investigation with a higher character as a citizen and as a man.

Mr. Harbaugh's Closing Argument.

I confess that I feel embarrassed in attempting to address you, from a variety of circumstances. The case covers a great deal of ground, the action of a certain drug, the symptoms of the woman, &c.

The law—all law, divine as well as human—attaches great importance to human life; no man has a right to trifle with it; the grand object of all government, the protection of life, liberty and property are only secondary. When life suddenly becomes extinct, the law steps in to see that no wrong

has been perpetrated. If a man is found dead, the public is not satisfied unless a rigid scrutiny is made into the facts and circumstances which led to the death. In this case, upon the declaration of the accused before the coroner, upon the evidence of his friends at the inquest, I felt it my duty that there should be an investigation. Have I done wrong?

The cases from the books where physicians are said not to be accountable for deaths occurring under their use of ordinary skill and care, are all where they were called upon professionally to treat diseases, they were not experimenting. Dr. Lodge was not called upon to treat this woman professionally, she was laboring under no disease, she did not require any medical treatment, there was no occasion to give her the drug. Observe her the morning of the day on which she died. She is on the front stoop scrubbing. She was healthy. He gives her the drug, and she soon after dies.

We have had the testimony of the physicians regarding the proving of medicines. If provings are allowable, how are they to be made with dangerous or poisonous drugs? Dr. Hempel tell us that "in experimenting with poisons, the prover would not experiment upon strangers. Prudence would require that a physician should inquire into the constitution, habits of life, &c., of the person before he experimented upon him or her by giving them poisonous drugs." Now you see what one of Dr. Lodge's own witnesses says, should be the caution in which such poisonous drugs as *Gelseminum* should be used.

DR. LODGE.—And Dr. Hempel says distinctly that the *Gelseminum* is NOT a drug of this character. Read *the whole* of what he says in relation to it.

MR. BARBAUGH continuing.—If *Gelseminum* is a poison, if it has energy and vitality to do what it will do, then a man who uses it should be acquainted with the condition and habits of life of the subject. They rest the defence on the ground that he is justified in giving any medical agent as an experiment to a healthy person. What protection will this give to human life? What license will you give to the men who claim this as a right? It is only the homœopaths who ask for it. Provings are not resorted to in the eclectic and allopathic schools. Shall the homœopaths have liberty and license to endanger human life and then shield themselves behind 'provings!' There must be a limit to this. Let the Doctors try their own, physie, I suppose they do not like it any better than lawyers like law.

We have three several statements from Dr. Lodge in regard to giving the drug to the woman. Before the coroner, of course, he made the most favorable he could make. (?). He experiments upon a healthy colored woman, in two hours she is dead. Why did he give it? He knew its properties, the whole profession knew them. He wanted to see if the dry root was inert or not, that was all. A fallacy to think the green root is the strongest, Dr. Duffield tells you it is not so. He made an extra strong tincture, double the usual proportion of root. He takes it himself and gives it to his children, it manifested its effects. Then he gives it to the colored woman. Was it prudent and cautions? Did he not know that there was danger? Had he any right to give it?

The Doctor was at fault, he was doing an unlawful act? A rash act in a rash manner! He is guilty of gross negligence, reckless disregard of human life, there is no apology, no excuse for his wantonly and recklessly giving that medicine.

After he gave the drug why did he not stay with her and watch its effects? He goes about his business as usual and pays no attention to her, until she goes to his room calling for help, "My God," &c.

The defence tells you the *Gelseminum* is not a poison. Dr. Barrett

testifies as to its relaxing effect, that it produees dimness of sight, &c.; Dr. Pitcher, that it diminishes vitality; Dr. Duffield, that it is a poison and that the dried root is the strongest. Of course it is, do not we know that the older a pill is the stronger it is! The older the whisky the better!

Dr. Terry testifies that he heard of this drug in 1830. No new thing. It is now included in the American Dispensary *with all its effects*!

[Extract from Cyclopedia of Practical Medicine read in relation to angina pectoris, but not dwelt upon, as in reading he found it described the death of Margaret Washington very closely. Lodge.]

This thing of attributing the death to angina pectoris is a new thing. Dr. Lodge did not speak of it at the inquest.

Dr. Lodge.—I was not asked for my opinion in regard to the cause of death.

Mr. Harbaugh resuming.—He cannot escape, all will say, by the action he took, that he did not attribute her disease to angina pectoris.

Dr. Hale tells us it is not a poison. That it would be difficult to kill a person with it. He says, also, that it is a proper remedy for angina pectoris. Why did he not attribute the death to angina pectoris before the coroner, he said there, in his opinion, the death resulted from the dropsy of the heart and the *indirect* action of the Gelseminum. Dr. Barrett does not think that she could have died of angina pectoris. This mode of accounting for her death is not satisfactory, it comes in a suspicious shape.

Dr. Lodge.—Dr. Alberton has testified that he was informed by me, before the death of this poor woman, that she had these well-marked symptoms of angina pectoris, how can it, therefore, be an after-thought, as you now say.

Mr. Harbaugh continuing.—You are not a witness.

Dr. Lodge.—I am not, certainly, but Dr. Alberton was.

Mr. Harbaugh resuming.—I submit to you, gentlemen, whether Dr. Lodge was not guilty of negligence and carelessness in giving the medicine when he had received a demonstration of its force and power upon his own person. Ought he to have given it to an ignorant woman without sitting by her and watching her. Take the ease and dispose of it as you think proper. I have given my view of it. I am sustained by the testimony and the law. My duty has been discharged. You will do yours to the public and the interests of the prosecution.

CHARGE TO THE JURY.—The defendant, Dr. Edwin A. Lodge, is charged in the information before you, with the crime of manslaughter. It is not claimed by the prosecuting attorney that the defendant intended to take life, or even to do the deceased any bodily harm, but it is urged that the defendant in administering Gelseminum, in the manner and under the circumstances, was guilty of a wanton and reckless act, and exhibited a mind regardless of consequences. As you have observed, the defence set up is two-fold—first, it is denied that the deceased came to her death by means of the Gelseminum; and secondly, conceding that the Gelseminum was the immediate cause of her death, it is denied that the giving of it in the quantity, and for the purpose shown in the evidence, was such a wanton and reckless act as makes the defendant amenable to the law for the crime of manslaughter.

In relation to the appropriate rank of Gelseminum in the *Materia Medica*, I must leave that to you to be decided as one of the facts in the case. But I will not withhold the expression of my own decided conviction, based upon the testimony, that the drug is a valuable remedial or therapeutical agent, all of whose properties are not yet known, but about which enough is known to authorize it to be ranked as a very valuable medicinal agent in

cases of fevers, convulsions, &c. I think this is fully established by the evidence of the medical gentlemen who were sworn on the trial. However, I do not mean to be understood as taking this question from your consideration, but I expressly submit it to you as a fact to be determined by you in the case whether Gelseminum is a poison as claimed by the prosecution or not.

The purpose for which the drug was administered has been stated by the defendant himself. He informs you that it was administered for the purpose of *proving* its properties. This system of *proving* medicines is very extensively adopted in all the schools of physic, but it is a distinguishing feature in the homœopathic system, of which the defendant is a practitioner. The administration of the Gelseminum, its properties, and the object of its administration considered, is claimed to be justified on the highest scientific and humanitarian principles. The right of a practitioner to test or *prove* on well persons the properties or qualities of drugs is claimed to be indisputable. This question is before me and must be passed upon. It is to be observed, that it is not claimed that a physician has the right to administer his medicines indiscriminately, without regard to time and place, or the health of the person upon whom the experiment is made, or the nature of the drug administered. Under the restrictions hereafter to be noticed, I think, the right of a physician to test or *prove* medicinal agents on healthy persons cannot be seriously questioned. Unless the science of medicine is to be considered at a *stand-still*, I cannot perceive how the right of practitioners to experiment in some form can be denied. Experiments have been made, are made, and always will be made, for otherwise the science of medicine would be in the crude and imperfect state in which it was left by Galen and Hippocrates, instead of the enlightened and advanced state in which we find it at the present day. Experiments on the lower animals while useful, and often leading to the most important results, are by no means satisfactory and conclusive as to the effect which drugs, or remedial agents, will have on the human system. Some of the wild berries, for example, are fatal to human life, but are eaten by birds with impunity. Some also eat certain roots without experiencing apparently any evil effects, which are known to be fatal to human life. The best, most accurate and reliable tests are those made upon the human system. This view is at once so just and obvious, that it has commended itself to the governments of Europe, where "*Provers Unions*," as they are called, for proving medicines, are established and are conducted under the direct sanction of public authority. Such is the case in Austria, Prussia, Germany, France and other smaller states of the continent. We are told that accidents in these provings are of very rare occurrence.

By experiments, many valuable remedies have been discovered. The mode of treating small-pox has been entirely reversed, and there can be no doubt that the present system, called the *cooling*, in contradistinction to what is known as the "*smothering process*," is infinitely more successful than that formerly practiced. The properties of Chloroform were discovered in this manner by Dr. Simpson. Examples might be multiplied, but they are not necessary for our purpose. While accident may discover to us many valuable remedies, it is chiefly upon experiment that we must rely for progress in the future. But, while I concede the moral and legal rights of a practitioner to experiment or prove for the benefit of science and humanity, I wish to be understood as enunciating this principle with the restrictions and conditions now to be enumerated. There are limits beyond which law and reason will not permit the experimentatist to go. First, no man has the right to experiment upon another without his consent.

Secondly, the person making the experiment or *proving* should freely and candidly inform the person upon whom the experiment or proving is to be made, what are the known properties of the drug, whether a poison, or otherwise, and whether dangerous or nauseous. It is the duty of the *prover* to administer the drug with a due regard to the age and health of the person, and to exercise such care and precaution as the nature of the experiment demands. It would not be legal to experiment upon a child, or an insane person, because in these cases there can be no intelligent consent, and no due appreciation of the risk or danger incurred. With these conditions and restrictions the right to experiment, as it seems to me, cannot be denied. To apply these principles to the case before you. If you shall find, the properties of the drug administered, the purpose for which it was given, and all the circumstances of the case, considered, that the defendant acted in such a wanton and reckless manner as to indicate a regardlessness of human life and health, and that the deceased came to her death from the Gelseminum, then you should render a verdict of guilty. But should you find all the circumstances considered, that the defendant used all proper care and that his conduct did not exhibit recklessness, then, even though death was caused by the Gelseminum, you should acquit, of course; if the Gelseminum did not cause the death of the deceased, your verdict should be not guilty.

After a short absence, the jury returned into court and rendered a verdict of not guilty.

The above impartial report shows so clearly the malice, prejudice, and ignorance which characterized the prosecution, that I submit it to the profession without any comment.

EDWIN A. LODGE, M.D.

DETROIT, July 3d, 1862.





